

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NICHOLAS E. PHILLIPS,

Petitioner,

v.

G. J. GIURBINO, Warden,

Respondent.

) 1:02-CV-F-05251-REC-TAG HC

) ORDER DISMISSING PETITION FOR WRIT  
) OF HABEAS CORPUS  
) (Doc. 1)

) ORDER DIRECTING CLERK OF COURT TO  
) ENTER JUDGMENT

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On March 29, 2005, the Magistrate Judge assigned to the case filed a Report and Recommendations recommending that the petition for writ of habeas corpus be DENIED. (Doc. 36). The Report and Recommendations was served on all parties and contained notice that any objections were to be filed within ten (10) days from the date of service of that order. Subsequently, Petitioner was granted an extension of time until June 6, 2005, within which to file his objections. (Doc. 38). On June 6, 2005, Petitioner timely filed his objections to the Report and Recommendations. (Doc. 39).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de*

1 *novo* review of the case. The court rules that the statement in the recommendation that the court  
2 must also determine whether the entire trial was fundamentally unfair or unreliable in determining  
3 ineffective assistance of counsel is not an appropriate articulation of the ineffective assistance of  
4 counsel test under the circumstances of this action. See Williams v. Taylor, 529 U.S. 362 (2000);  
5 United States v. Day, 285 F.3d 1167 (9th Cir. 2002). However, having carefully reviewed the entire  
6 file, including Petitioner's objections, the Court concludes that the Magistrate Judge's Report and  
7 Recommendations is supported by the record and the court concurs in the conclusions set forth in the  
8 recommendation.

9 ACCORDINGLY:

- 10 1. The petition for writ of habeas corpus (Doc. 1) is DENIED; and  
11 2. The Clerk of Court is DIRECTED to ENTER JUDGMENT for Respondent.

12 IT IS SO ORDERED.

13 **Dated: July 15, 2005**  
668554

**/s/ Robert E. Coyle**  
UNITED STATES DISTRICT JUDGE